

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

MARY BOURBON,

Plaintiff,

V.

CREDIT AND DEBT MANAGEMENT  
OF AMERICA, GP, LLC,

Defendant.

Case No. 4:08-cv-00681

## JURY TRIAL DEMANDED

**DEFENDANT’S MOTION TO DISMISS PURSUANT TO RULE 12(B)(3) OR, IN  
THE ALTERNATIVE, TO COMPEL ARBITRATION  
AND STAY THE PENDING PROCEEDING**

COMES NOW Defendant Credit and Debt Management of America, GP, LLC  
(hereinafter “CDMA”), by and through undersigned counsel, and for its Motion to  
Dismiss or, in the Alternative, to Compel Arbitration and to Stay the Pending Proceeding  
states:

1. Plaintiff filed this claim and cause of action in Missouri State Court alleging:
  4. “Defendant sent Plaintiff agreements and other documents to obtain Plaintiff’s money for themselves and for their debt adjusting schemes ...
  6. Plaintiff signed all the agreements and returned them to Defendant, so Defendant could adjust Plaintiff’s debts.”

2. Notwithstanding Plaintiff's allegation that she signed "agreements" that govern the relationship between her and Defendant, she fails to incorporate any terms or attach "them" to her Petition.

3. Attached hereto as Exhibit A is the Affidavit of Charles Stephenson and a copy of the written agreement. Said agreement states in relevant part:

17. "Arbitration. The parties agree that any controversy or claim relating to this agreement or for breach thereof by any party shall be settled by arbitration administered by the American Arbitration Association ("AAA") under its applicable rules. Then in effect. If such arbitration is held under the auspices of any other organization, the arbitration will be held in accordance with the AAA rules to the extent possible. The arbitration may be held elsewhere, any request for arbitration shall be filed in the offices of the AAA located in Frisco, Texas. Binding arbitration means that both parties give up the right to a trial by a jury. It also means that both parties give up the right to appeal from the arbitrator's ruling except for a narrow range of issues in which the law provides the right of appeal. It also means that discovery may be severely limited by the arbitrator. To the extent permitted by law, customer waives the right to bring, join or participate in any class action as to any claim, dispute or controversy you may have against CDMA or our agents, servicers, directors, officers and employees.

18. Choice of Law and Jurisdiction. This agreement is made and the services contemplated hereunder are to be performed solely in the State of Texas. In the event for a dispute that is not resolved by arbitration as set forth in paragraph 16, customer and CDMA agree that the venue of the resolution shall be in the Collin County and City of Frisco, Texas, and in no other location. Both CDMA and customer agree that any disputes arising from this agreement shall be covered by the laws of the State of Texas, notwithstanding any conflicts of law principles to the contrary.”

**A. The Action Should be Dismissed without Prejudice**

4. The contract governing the relationship between the parties requires any disputes be arbitrated and, if arbitration does not resolve the issues, that any legal action be brought solely in Collin County, Texas. Plaintiff’s current suit fails to comply with the terms of the contract. Thus, this action is in an improper venue and subject to dismissal under Rule 12(b)(3) of the Federal Rules of Civil Procedure.

5. As arbitration is the agreed forum for any dispute, this case should be dismissed. See *Sprague v. Household International*, 473 F.Supp.2d 966 (W.D.Mo.2005). This result is required under the forum selection clause as well. The forum selection clause in the contract requires that in the event that mandatory arbitration fails, a lawsuit may only be brought in Collin County, Texas. Forum selection clauses are prima facie valid and enforced. *Monsanto Company v. Dawson*, 2000 WL 33952259 (E.D.Mo.) at

\*2. Plaintiff has not challenged the validity of this clause or any aspect of the

agreement. And rather, after alleging that there are such “agreements”, her Petition simply ignores the issue.

**B. In the Event the Court Does not Dismiss this Case, it Should Order Plaintiff to Arbitrate the Dispute and Stay the Case**

6. A party to an arbitration agreement may request arbitration of claims when the other party has instead filed its claim in court. *Sprague*, at 970 citing 9 U.S.C. § 4. If the Court finds the claims are referable to arbitration, they should be stayed. *Id.* citing 9 U.S.C. § 3. Missouri law, by virtue of RSMo. § 435.355, provides that a party may file an application compelling arbitration and for the action or proceeding involving an issue subject to arbitration be stayed. Texas law provides for the same remedy. See VTCA § 171.021. Thus, whether applying Federal, Missouri or Texas law the arbitration provision in this contract is controlling and if this action is not dismissed outright, Plaintiff should be ordered to arbitrate these matters in accordance with the terms of the agreement and this matter should be stayed.

WHEREFORE Defendant Credit and Debt Management of America, GP, LLC, prays this Court dismiss Plaintiff’s claims without prejudice or, in the alternative, enter its order compelling Plaintiff to arbitrate this dispute, staying the pending proceedings and for such other and further relief as this Court deems just and proper under the circumstances.

WILLIAMS VENKER & SANDERS LLC

/s/ Michael B. Hunter

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ATTORNEY FOR DEFENDANT  
CREDIT AND DEBT  
MANAGEMENT OF AMERICA, GP, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on May 14, 2008, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

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